A party cannot seek to enforce the procedure of a court beyond its jurisdiction. Such a situation is suggested by a recent Nebraska case where, in divorce proceedings, the court ordered a conveyance of land situated in another state. *Fall* v. *Fall*, 113 N. W. 175. The prospective grantee brought a bill in the court of the situs to quiet title. The bill, of course, failed, because no title, legal or equitable, could be created by the other court, and no other right in the land was alleged. Nor could the plaintiff have succeeded in any other way. The order was simply a part of the procedure of the court, just as it might award future alimony or security therefor. If it does not execute such orders, no right of action exists upon which to have execution in another state.[9]

THE POWER OF A TRUSTEE TO LEASE TRUST PROPERTY. — Where a trustee has legal title to land and is charged with the active duty of raising an income therefrom, he is confronted with the problem as to whether or not he has power to lease, and if he has, to what extent. There can be no implied power to lease where the trust is a passive one,[1] or where the trust instrument indicates a contrary intention.[2] And where the instrument expressly grants power to lease for a specified term, no authority can be implied to grant a longer lease, or to deviate in any way from the limitations of the grant.[3] Clearly, where the trust must terminate at a given time, the trustee cannot lease beyond that time, and no lease beyond his power will bind the remainderman. But where the trust deed is silent as to the right to lease and the trust is for an indefinite period, the trustee has an implied power to lease for the shortest period essential to the economical use of the land, provided that such lease is not likely to extend beyond the duration of the trust.[4] The circumstances which determine whether or not the trustee's action has been reasonable are reviewed in a recent Iowa case. *In re Hubbell Trust*, 113 N. W. 512. The nature of the property to be leased is an important element. Thus, leases of agricultural land may often be advantageously made for short periods, while mining leases and leases of city lots, where the lessee must be allowed to build or make improvements in order that the land may be productive, may require comparatively long terms.[5] The business usage of each community will affect the proper extent of the lease. The interests of the remainderman must also be considered by the trustee. When the remainderman is a descendant of the *cestui que trust*, and necessity requires it, the court might well approve a lease longer than the probable term of the trust. This, however, cannot be supported on the theory of implied power in the trustee, but only on the theory that equity, taking the place of the creator of the trust, will do what in all probability he would have done had he anticipated the emergency.[6] Whether or not courts will adopt this *cy pres* doctrine, the trustee himself has no power to make such a lease.

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[9] Bullock *v.* Bullock, 52 N. J. Eq. 561.

[1] Hefferman *v.* Taylor, 15 Ont. 670.
[2] Evans *v.* Jackson, 6 L. J. Ch. 8.
[3] Bowers *v.* East London, etc., Co., Jac. 324.
[4] Fitzpatrick *v.* Waring, L. R. Ir. 11 Ch. D. 35.
[5] Newcomb *v.* Kettellas, 19 Barb. (N. Y.) 608.
[6] Marsh *v.* Reed, 184 Ill. 263.

Concerning the respective rights of the remainderman and the lessee when the trust terminates, the authorities are not in accord. Where the trustee leases for an unreasonable term, the excess only will be void in equity, according to the principle that where a lease under a power is executed for a longer term than is authorized by the power, it is void only for the excess.[7] The excess will be void in equity, since the purchaser of a leasehold estate from a trustee is charged with constructive notice of the terms of the trust. But if the lease by a trustee is for a reasonable period, will the term drop if the trust comes to an end sooner than the term? The weight of authority seems to be that it will.[8] Many such holdings are based on a statute[9] whereby, when the trust ends, legal title passes forthwith from the trustee to the remainderman; for the courts argue that a trustee, like a tenant for life, cannot make a lease for years which will be valid after the termination of his estate. But whatever view be taken of a trustee's estate, whether the legal fee be determinable or absolute, there seems no reason to hold that, if he has an implied power to lease, the whole term is not valid. The validity should depend not on the extent of the trustee's legal estate, but on the extent of his power.[10]

WAIVER OF TRIAL BY JURY IN CRIMINAL CASES. — The apparent confusion on the question whether the issue of fact raised by a plea of not guilty may, with the consent of the parties, be tried by the court without a jury, seems to have arisen from the dicta of judges, who have propounded a doctrine of waiver of constitutional rights instead of construing the enacted law. It is believed that almost all the holdings in point may be reconciled by a scrutiny in each case of the constitutional and statutory provisions, and the grade of the offense. Where a constitution provides that there shall be no conviction except by verdict of a jury, the court alone cannot have jurisdiction of the issue,[1] and a statute permitting waiver of jury would seem invalid;[2] even minor offenses may have been within the intent of the enacting convention.[3] But most of the state constitutions merely declare that the right of trial by jury shall remain inviolate, or that the accused shall enjoy the right to a trial by jury, and under such provisions the courts have almost universally upheld statutes permitting waiver,[4] even in cases of felony.[5] In the absence of such statutes, however, the law of criminal procedure must be derived from the common law, and since at common law trial by jury prevailed exclusively, trial by the court is unauthorized and invalid.[6] A more common but much less sound explanation is that public policy, as dictated by the constitution, forbids waiver.[7] Neither of the

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[7] Pawcy *v.* Bowen, 1 Ch. Cas. 23.
[8] Gomez *v.* Gomez, 147 N. Y. 195; Hutcheson *v.* Hodnett, 115 Ga. 990.
[9] N. Y. Laws, 1896, c. 547, § 89.
[10] *Cf.* Sugden, Powers, 722.

[1] State *v.* Holt, 90 N. C. 749.
[2] State *v.* Cottrill, 31 W. Va. 162. *Contra*, State *v.* Griggs, 34 W. Va. 78.
[3] See State *v.* Stewart, 89 N. C. 563.
[4] Edwards *v.* State, 45 N. J. L. 419. *Contra*, Brimingstool *v.* People, 1 Mich. N. P. 260.
[5] Murphy *v.* State, 97 Ind. 579; State *v.* Worden, 46 Conn. 349.
[6] See Harris *v.* People, 128 Ill. 585. *Contra*, Wren *v.* State, 70 Ala. 1.
[7] *Cf.* Cancemi *v.* People, 18 N. Y. 128.